

MICHELE FOLLMAN
MC FARLIN vs WORD ENTERPRISES

December 05, 2017

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<p style="text-align: right;">Page 1</p> <p>1 IN THE UNITED STATE DISTRICT COURT</p> <p>2 FOR THE EASTERN DISTRICT OF MICHIGAN</p> <p>3 SOUTHERN DIVISION</p> <p>4</p> <p>5 CHAD MCFARLIN, individually</p> <p>6 and on behalf of all</p> <p>7 similarly situated persons,</p> <p>8</p> <p>9 Plaintiffs,</p> <p>10 vs. Civil Action No:</p> <p>2:16-cv-12536</p> <p>11 HON. GERSHWIN A. DRAIN</p> <p>12 THE WORD ENTERPRISES, LLC,</p> <p>13 et al,</p> <p>14</p> <p>15 Defendants.</p> <p>16 _____/</p> <p>17</p> <p>18</p> <p>19 The Deposition of MICHELE FOLLMAN was taken</p> <p>20 before me, Barbara Phillips, (CER #5598) and Notary</p> <p>21 Public, in and for the County of Washtenaw, State of</p> <p>22 Michigan, at 221 N. Main Street, Suite 300, Ann</p> <p>23 Arbor, Michigan, on Tuesday, December 5, 2017, at</p> <p>24 1:45 p.m.</p> <p>25</p>	<p style="text-align: right;">Page 3</p> <p>1 I N D E X</p> <p>2 WITNESS: PAGE:</p> <p>3 M I C H E L E F O L L M A N</p> <p>4</p> <p>5 Examination by Mr. Blanchard 4</p> <p>6</p> <p>7</p> <p>8</p> <p>9 ** * * * * *</p> <p>10</p> <p>11 E X H I B I T S</p> <p>12 EXHIBITS: PAGE:</p> <p>13</p> <p>14 Deposition Exhibit No. 25 51</p> <p>15</p> <p>16</p> <p>17 ** * * * * *</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES:</p> <p>2</p> <p>3 DAVID M. BLANCHARD (P67190)</p> <p>4 221 N. Main Street, Suite 300</p> <p>5 Ann Arbor, Michigan 48104</p> <p>6 734-929-4313</p> <p>7</p> <p>8 Appearing on behalf of the Plaintiffs.</p> <p>9</p> <p>10</p> <p>11 JEFFREY S. THEUER (P44161)</p> <p>12 124 West Allegan Street, Suite 700</p> <p>13 Lansing, Michigan 48933</p> <p>14 517-482-2400</p> <p>15</p> <p>16 Appearing on behalf of the Defendants.</p> <p>17</p> <p>18 ** * * * * *</p> <p>19</p> <p>20 REPORTED BY: Barbara Phillips,</p> <p>21 (CER #5598)</p> <p>22 and Notary Public.</p> <p>23</p> <p>24</p> <p>25 ALSO PRESENT: Kevin Dittrich</p>	<p style="text-align: right;">Page 4</p> <p>1 Ann Arbor, Michigan</p> <p>2 Tuesday, December 5, 2017</p> <p>3 1:45 p.m.</p> <p>4</p> <p>5 ** * * * * *</p> <p>6</p> <p>7 M I C H E L E F O L L M A N</p> <p>8 after having been first duly sworn to tell the</p> <p>9 truth, the whole truth, and nothing but the</p> <p>10 truth, was examined and testified upon her</p> <p>11 oath as follows:</p> <p>12</p> <p>13 ** * * * * *</p> <p>14 E X A M I N A T I O N</p> <p>15 BY MR. BLANCHARD:</p> <p>16 Q. Thank you, Ms. Follman. You've been here the whole</p> <p>17 time during part one and part two of Mr. Dittrich's</p> <p>18 testimony; is that correct?</p> <p>19 A. Yes.</p> <p>20 Q. And he has been speaking on behalf of the companies,</p> <p>21 defendant companies pursuant to what we marked</p> <p>22 previously. We've got these exhibits in front of</p> <p>23 you. The re-notice of the deposition is Exhibit 16</p> <p>24 which I'm showing you right now. It's in front of</p> <p>25 you. And you've been designated as somebody who can</p>

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<p style="text-align: right;">Page 5</p> <p>1 answer some of the additional questions and you've</p> <p>2 heard what those questions are and stuff, right?</p> <p>3 A. Yes.</p> <p>4 Q. And you've heard the testimony of Mr. Dittrich. Was</p> <p>5 there anything as to the topics that we're noticing</p> <p>6 in this deposition that I asked about, anything in</p> <p>7 particular that stands out that needs to be</p> <p>8 corrected or was incorrect in any way?</p> <p>9 A. No.</p> <p>10 Q. I'd like you to turn to Exhibit 17 which is the next</p> <p>11 one here and that's your affidavit. I'm going to</p> <p>12 ask you about that one. Who, if anyone, helped you</p> <p>13 prepare this document?</p> <p>14 A. Counsel.</p> <p>15 Q. Anyone other than counsel?</p> <p>16 A. No.</p> <p>17 Q. And what was your understanding of the purpose of</p> <p>18 this document?</p> <p>19 A. I'm not sure.</p> <p>20 Q. Like, for instance, were you under the understanding</p> <p>21 that this was for the purpose of informing the</p> <p>22 expert or the accountant on certain business</p> <p>23 practices?</p> <p>24 A. I'm not sure.</p> <p>25 Q. Do you know what the purpose of it was really?</p>	<p style="text-align: right;">Page 7</p> <p>1 A. We use the tip credit to get them to minimum wage</p> <p>2 with their compensation for their vehicle costs. So</p> <p>3 not just the minimum wage, but with their costs</p> <p>4 included.</p> <p>5 Q. What components of the money that's given to the</p> <p>6 drivers is intended to be a reimbursement for their</p> <p>7 mileage?</p> <p>8 A. It's the whole -- the package. Their wages, their</p> <p>9 compensation per delivery and their tips.</p> <p>10 Q. So are you saying that there is no specific portion</p> <p>11 of a driver's money that they receive that's</p> <p>12 intended to be reimbursement for driving expenses?</p> <p>13 A. Can you ask that again one more time?</p> <p>14 Q. Yeah. I want to get a clear answer and I want to be</p> <p>15 clear about what the question is, too, so I'm not</p> <p>16 doing the best job. Is there any particular piece</p> <p>17 of the money that changes hands between the</p> <p>18 defendant companies and the driver that's intended</p> <p>19 and designated as reimbursement for the expense</p> <p>20 incurred by the drivers?</p> <p>21 A. That is only designated for that expense?</p> <p>22 Q. That is designated at all or in part as</p> <p>23 reimbursement for the expense incurred by the</p> <p>24 drivers.</p> <p>25 A. I would say yes.</p>
<p style="text-align: right;">Page 6</p> <p>1 A. I don't know. I answered the questions my lawyer</p> <p>2 asked me.</p> <p>3 Q. In paragraph eight of your affidavit declaration</p> <p>4 here -- are you familiar with it by the way? Do you</p> <p>5 need to take time to read it or review it?</p> <p>6 A. I'm familiar.</p> <p>7 Q. In paragraph eight you testify the driver employees</p> <p>8 at the two operating companies -- this was before</p> <p>9 Durand was added, were not paid on the basis of</p> <p>10 minimum wage plus vehicle reimbursement. Why did</p> <p>11 you say that?</p> <p>12 A. We did not pay a minimum wage plus reimbursement</p> <p>13 there. We used the tip credit to get them to</p> <p>14 minimum wage with their compensation for the vehicle</p> <p>15 costs.</p> <p>16 Q. So all you're saying in that particular sentence,</p> <p>17 the first sentence of paragraph eight, is that you</p> <p>18 were using the tip credit and paying a cash wage</p> <p>19 that was below the minimum wage rather than on the</p> <p>20 basis of minimum wage and vehicle reimbursement?</p> <p>21 MR. THEUER: I'll object to the</p> <p>22 characterization, but go ahead and answer.</p> <p>23 BY MR. BLANCHARD:</p> <p>24 Q. I'm just trying to understand what you're trying to</p> <p>25 say there?</p>	<p style="text-align: right;">Page 8</p> <p>1 Q. Can you tell me what that is?</p> <p>2 A. If I'm understanding you correctly then part of</p> <p>3 their pay package with the tips. The hourly pay and</p> <p>4 compensation goes to reimbursing them their vehicle</p> <p>5 costs.</p> <p>6 Q. Which part of that?</p> <p>7 A. It's a package deal so I mean there's nothing</p> <p>8 specifically designated just to that.</p> <p>9 Q. So we talked in your prior testimony about a</p> <p>10 delivery fee that's paid to drivers?</p> <p>11 A. Yes.</p> <p>12 Q. And that was 75 cents per delivery?</p> <p>13 A. Yes.</p> <p>14 Q. Plus, at the Laingsburg location it was something</p> <p>15 different. It was \$1.75 and now I guess it's 2.75,</p> <p>16 right?</p> <p>17 A. Yes.</p> <p>18 Q. And now is the base delivery fee that's paid still</p> <p>19 75 cents or is it a dollar?</p> <p>20 A. 75 cents still.</p> <p>21 Q. And that's for all the defendant stores?</p> <p>22 A. Yes.</p> <p>23 Q. And we had a question about the cash wage that's</p> <p>24 paid to drivers at all defendant stores. Is it</p> <p>25 still \$5 for all the drivers?</p>

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<p style="text-align: right;">Page 21</p> <p>1 A. This one here?</p> <p>2 Q. Yes.</p> <p>3 A. Yes.</p> <p>4 MR. BLANCHARD: I think at some point we're</p> <p>5 gonna need -- just so we understand where the math</p> <p>6 is going in here, where the calculations are coming</p> <p>7 from, we're gonna need an electronic format of this.</p> <p>8 As far as I know I've only gotten this small PDF.</p> <p>9 Will you be able to provide that?</p> <p>10 MR. THEUER: I don't know with certainty, but</p> <p>11 we can explain anything.</p> <p>12 MR. BLANCHARD: Well, I am going to ask her</p> <p>13 what she knows, but I think the simplest way to get</p> <p>14 this kind of information is going to be in a</p> <p>15 spreadsheet that speaks for itself.</p> <p>16 BY MR. BLANCHARD:</p> <p>17 Q. So you prepared for each week the information that's</p> <p>18 found on this sheet, Exhibit 20?</p> <p>19 A. Yes.</p> <p>20 Q. And in the first three columns -- well, the first</p> <p>21 column it says date of pay and that's the actual pay</p> <p>22 date, right?</p> <p>23 A. Yes, the check.</p> <p>24 Q. And in the three columns after that you have the</p> <p>25 hours in store, hours out of store, and total number</p>	<p style="text-align: right;">Page 23</p> <p>1 A. The regular wages would be the in store hours and</p> <p>2 then the on the road hours.</p> <p>3 Q. The cash wage?</p> <p>4 A. The cash wage paid. The gross pay for those.</p> <p>5 Q. Okay. Go ahead.</p> <p>6 A. The credit card tips would be the reported credit</p> <p>7 card tips that the computer kept track of. And then</p> <p>8 the estimated cash tips is what we estimated based</p> <p>9 on our findings of cash tips to be, what they should</p> <p>10 have made for cash tips at that time period.</p> <p>11 Q. So these three columns you just explained here are</p> <p>12 in your formula considering the three parts of the</p> <p>13 driver's wages; is that right?</p> <p>14 A. Three parts, yes.</p> <p>15 Q. And part of the driver's wages you're saying you</p> <p>16 estimated?</p> <p>17 A. The cash tips were estimated. We did not have</p> <p>18 actual numbers for those, but we used a formula to</p> <p>19 figure it out.</p> <p>20 Q. Did you do tax withholding on the total of those</p> <p>21 three columns?</p> <p>22 A. On the regular wages and the credit card tips there</p> <p>23 was tax withholding.</p> <p>24 Q. And what is your basis for believing that the store</p> <p>25 is entitled to count the tips paid by a customer to</p>
<p style="text-align: right;">Page 22</p> <p>1 of hours, right?</p> <p>2 A. Yes.</p> <p>3 Q. And then the pay rate in store and road because</p> <p>4 there's a split wage system and it looks like it</p> <p>5 went to 8.50 at some point?</p> <p>6 A. Yes.</p> <p>7 Q. And then if I look at the column for January 14th of</p> <p>8 2016 or I should say the row for January 14th of '16</p> <p>9 and it says the rate is 8.50, and then I look over</p> <p>10 to the -- you inputted this column total minimum</p> <p>11 wage to be paid, right?</p> <p>12 A. Yes.</p> <p>13 Q. Would we expect that to be -- the full minimum wage</p> <p>14 at that point would be 8.50 times the total number</p> <p>15 of hours?</p> <p>16 A. Yes.</p> <p>17 Q. So that's the kind of thing. If I look at this</p> <p>18 column and the data behind it it would say take</p> <p>19 column three, total hours, multiply by column four,</p> <p>20 minimum wage, equals that column six?</p> <p>21 A. Yes.</p> <p>22 Q. And then tell me what the next three columns are.</p> <p>23 Regular wage paid, credit card tips, and I think the</p> <p>24 next one says estimated cash tip paid, and tell me</p> <p>25 where you got those numbers.</p>	<p style="text-align: right;">Page 24</p> <p>1 a driver as wages?</p> <p>2 A. Because they're a tipped employee and we use the tip</p> <p>3 credit.</p> <p>4 Q. And how does the tip credit work to your</p> <p>5 understanding?</p> <p>6 A. To my understanding we pay them -- well, we're</p> <p>7 paying them \$5 an hour and they make up the</p> <p>8 difference between that and the minimum wage</p> <p>9 inputting all the reimbursements to the minimum</p> <p>10 wage. To the 8.15, 8.50, 8.90, whatever the minimum</p> <p>11 wage is at that time.</p> <p>12 Q. The store gets to take a credit and treat as wages</p> <p>13 that portion that brings it up to the minimum wage?</p> <p>14 A. Yes.</p> <p>15 Q. And that portion of tips paid to the driver that's</p> <p>16 above the minimum wage, are you saying it's your</p> <p>17 understanding or your belief that the store gets to</p> <p>18 treat those as wages as well?</p> <p>19 MR. THEUER: I'll object to the extent that it</p> <p>20 calls for a legal conclusion, but you can answer if</p> <p>21 you can.</p> <p>22 THE WITNESS: I don't know the answer. I don't</p> <p>23 know.</p> <p>24 BY MR. BLANCHARD:</p> <p>25 Q. Let's look -- I'm going to come back to this Exhibit</p>

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<p style="text-align: right;">Page 25</p> <p>1 20. It's definitely going to be a touchstone we'll 2 talk about today, but I wanted to direct you to 3 Exhibit 18 which is the minimum wage notice for 4 tipped employees. And Mr. Dittrich directed me to 5 you to ask some of these questions about this 6 notice. You already testified to it. We don't need 7 to repeat it all, but this is a notice that was 8 posted at each of the defendant stores, right? 9 A. Yes. 10 Q. And that was for a period of time that probably 11 would have been around 2014 to the end of 2015? 12 A. Yes. 13 Q. And then in 2016 the minimum wage went up. Was 14 there a new notice prepared in the same format as 15 this one and then pasted at the stores? 16 A. Yes. 17 Q. And then it's going up -- has it gone up from 8.50? 18 A. Yes. 19 Q. What's the current minimum wage? 20 A. 8.90. 21 Q. And when it went up to 8.90 was it the same -- well, 22 let me ask it, was there a similar notice posted 23 that has the 8.90 number on it? 24 A. I believe so. 25 Q. Was it made off the same template? Was it like the</p>	<p style="text-align: right;">Page 27</p> <p>1 A. No. 2 Q. Have you done any studies yourself of what a 3 reasonable reimbursement is or what factors should 4 be considered in a reasonable mileage reimbursement 5 for employees? 6 A. No. 7 Q. So let's go back to Exhibit 20 again and then next 8 we talked about the wages part. So when you're 9 reporting on this spreadsheet the total wages paid 10 you're counting the cash wage, plus the credit card, 11 all tips. Not just the portion that's between the 12 cash wage and 8.15 an hour, but all credit card tips 13 reported, plus an estimated cash tip, right? You're 14 counting all of those things as wages? 15 A. Yes. 16 Q. The next column is driver commission paid? 17 A. Yes. 18 Q. Well, let me ask this way, did you put the name 19 driver commission paid in the title there? 20 A. I don't remember. 21 Q. Is that -- I'm sorry. Go ahead. 22 A. I don't remember if that was my wording or theirs. 23 Q. Do you usually call it driver commission, the 24 delivery fee that we were talking about? 25 A. Yes.</p>
<p style="text-align: right;">Page 26</p> <p>1 exact same notice except just the number was 2 changed? 3 A. It's a part of our labor law poster. 4 Q. Oh, that says what the minimum wage is? 5 A. Yes. 6 Q. But I'm asking in the format of Exhibit 18 -- 7 A. There is a portion on the labor law poster that has 8 the tipped wage information on it. It's in pretty 9 much the same format. 10 Q. Was there a version of Exhibit 18 that was posted 11 with the new rates that came out? 12 A. Yeah. I believe so, yeah. 13 Q. And it says here we apply the difference between 14 your regular hourly rate and 8.15 as a quote, "tip 15 credit" for each hour worked. That's the heart of 16 the tip credit, right, where a portion of the tips 17 get to be treated as wages? 18 A. Yes. 19 Q. And the amounts in this case when it was the 8.15 20 minimum wage, the amounts over 8.15 are tips from 21 the customer to the driver that belong to the 22 driver, right? 23 A. Yes. 24 Q. Exhibit 23 is this reimbursement sheet. Have you 25 seen that before?</p>	<p style="text-align: right;">Page 28</p> <p>1 Q. And that is the delivery fee we were talking about 2 that appears in that column, right? 3 A. Yes. 4 Q. And that was -- just so I have this right, for all 5 of the numbers in that column on Exhibit 20, the 6 so-called driver commission paid, that was never 7 subject to a withholding tax reported on a paycheck 8 or reported to the IRS at the end of the year, 9 correct? 10 A. Yes. 11 Q. Yes, that's correct? 12 A. Yes, that's correct. 13 Q. So the next column over you have total wages, tip 14 and commission paid. So that's just an adding up of 15 the previous four columns, right? 16 A. Yes. 17 Q. Treated as wages, the total amount of estimated tips 18 the driver receives, plus the untaxed so-called 19 driver commission, and total all that up together 20 for the driver commission paid -- total wages, tip 21 and commission paid? 22 A. Yes. 23 Q. And again, do you remember if you gave it that title 24 or if somebody else gave it that title? 25 A. I don't remember.</p>

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<p style="text-align: right;">Page 37</p> <p>1 Q. Actual miles driven during period. You said that's 2 data you filled out? 3 A. That's my data, yes. 4 Q. And you created that based on using Mapquest -- 5 using the wonder of the Internet these days to track 6 down the distance between locations, correct? 7 A. Yes. 8 Q. I'm not going to mark those. There were some 9 spreadsheets we've been provided that look like this 10 that say daily delivery orders on the top? 11 A. Yes. 12 Q. Is this the data -- and they have addresses and 13 deliveries. Is this the data that you uses to do 14 the so-called Mapquesting and get the mileage? 15 A. Yes. 16 Q. And then there's another document that we've 17 produced that Mr. McFarlin made his own notes 18 regarding the miles driven for a certain period of 19 time. Have you seen or reviewed that? 20 A. No. 21 Q. So going to the next column, it says actual miles 22 driven less total miles reimbursed. Do you know 23 what that is? 24 A. No. 25 Q. Does it appear looking at it now that it's the</p>	<p style="text-align: right;">Page 39</p> <p>1 A. I don't know. 2 Q. The next column over, the mile reimbursement for 3 this pay period, do you understand how that was 4 created? 5 A. I didn't create that column. 6 Q. You don't know what the formula was that comes up 7 with this? 8 A. I don't know. 9 Q. It's 47 and 41 and 43 and 44. You don't know what 10 formula was behind that either? 11 A. No. 12 Q. What about this box at the bottom that has average 13 miles driven and average miles compensation rate, 14 did you create that data? 15 A. No. 16 Q. There's an asterisk down at the bottom. It says 17 total variable cost of operating a vehicle per mile 18 is .148 per Department of Labor Bureau of 19 Transportation Statistics which include gas, 20 maintenance, tires. Did you write that or provide 21 that to your counsel? 22 A. No. 23 Q. Do you have any understanding of what the difference 24 between variable cost and fixed cost of vehicle 25 ownership are?</p>
<p style="text-align: right;">Page 38</p> <p>1 difference between the previous two columns? 2 A. Yes. 3 Q. And one of those previous two columns you said 4 didn't make sense to you, right? 5 MR. THEUER: Objection as to the 6 mischaracterization. 7 BY MR. BLANCHARD: 8 Q. The one that says total miles reimbursed for period. 9 That doesn't make sense, does it? 10 A. I didn't do it. I just don't know what it means. 11 Q. Is there anything that you can think of that that 12 could possibly mean? 13 A. I don't know. 14 Q. And then there's a column for total un-reimbursed 15 for variable operating costs for a period and it's 16 all negative numbers. Total under-reimbursed. I'm 17 sorry. I read that wrong. Total dollar figure 18 under-reimbursed for variable operating costs for a 19 period. Did you create that column? 20 A. No. 21 Q. Is that some kind of formula factoring in the 22 previous three columns? 23 MR. THEUER: Objection, calls for speculation. 24 BY MR. BLANCHARD: 25 Q. If you know.</p>	<p style="text-align: right;">Page 40</p> <p>1 A. No. 2 Q. Have you on behalf of the company reached any 3 conclusions regarding which type of vehicle 4 expenses, fixed or variable, are appropriately part 5 of a vehicle reimbursement policy? 6 MR. THEUER: Objection, calls for a legal 7 conclusion. Go ahead and answer if you can. 8 THE WITNESS: No. 9 BY MR. BLANCHARD: 10 Q. That reminds me. I'll just show you this. We don't 11 need to mark it. It's a vehicle information form 12 that's been produced to us. Have you seen this form 13 before? 14 A. No. 15 Q. Is there a version of a vehicle information form 16 that each new delivery driver who hires in has to 17 fill out? 18 A. No. 19 Q. What information is the delivery driver asked to 20 provide when they're hired regarding their car? 21 A. Driver's license, proof of insurance and 22 registration. 23 Q. And those three things are copied and put in the 24 personnel file in the normal course? 25 A. Yes.</p>

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<p style="text-align: right;">Page 41</p> <p>1 Q. So in theory at least you should have those for all</p> <p>2 of the delivery drivers at all of the stores?</p> <p>3 A. Yes.</p> <p>4 Q. I saw a policy at one point that suggested if the</p> <p>5 current proof of insurance is not entered that the</p> <p>6 system will like shut the driver down and not even</p> <p>7 let them take runs?</p> <p>8 A. Yes.</p> <p>9 Q. Is that right, is there an update switch in the</p> <p>10 Rejuvenate system or whatever it's called?</p> <p>11 A. In the Revention, yes.</p> <p>12 Q. The Revention system?</p> <p>13 A. You can enter in the new dates when they receive</p> <p>14 their new proof.</p> <p>15 Q. So that's like a safety check to make sure that you</p> <p>16 get the new proof of insurance?</p> <p>17 A. Yes.</p> <p>18 Q. So if you don't get a new proof of insurance the</p> <p>19 system shuts that driver out because the old date</p> <p>20 becomes expired and then it's just automatic, right?</p> <p>21 A. Yes.</p> <p>22 Q. So each time a new driver provides a new proof of</p> <p>23 insurance who is it -- is it you or is it the store</p> <p>24 manager who has to go in and update that?</p> <p>25 A. The store manager.</p>	<p style="text-align: right;">Page 43</p> <p>1 blown out or something like that is a part of being</p> <p>2 legal on the road, right?</p> <p>3 A. That is a part of being legal on the road.</p> <p>4 Q. Then there are other parts we can imagine about good</p> <p>5 working order of the car, that certain parts of it</p> <p>6 are a part of being legal on the road. Again, it's</p> <p>7 lights, blinkers, turn signals, brakes, muffler.</p> <p>8 All of those things are a part of being legal on the</p> <p>9 road, right?</p> <p>10 A. They are.</p> <p>11 Q. And does Hungry Howie's pay those expenses for its</p> <p>12 delivery drivers? I mean I should say the Word, the</p> <p>13 defendant stores in this case. Do the defendant</p> <p>14 stores pay those expenses for the delivery drivers?</p> <p>15 MR. THEUER: I'll object to the foundation of</p> <p>16 question. Answer if you can.</p> <p>17 THE WITNESS: I don't understand what you're</p> <p>18 asking.</p> <p>19 BY MR. BLANCHARD:</p> <p>20 Q. I'm asking if the drivers have maintenance expenses</p> <p>21 to keep their car legal on the road if the Word</p> <p>22 reimburses them for that, the Word stores reimburses</p> <p>23 them for that?</p> <p>24 A. Through their pay package.</p> <p>25 Q. Are there any components of the pay package outside</p>
<p style="text-align: right;">Page 42</p> <p>1 Q. And they have to go in and enter a new end date for</p> <p>2 the proof in order for the system to work for that</p> <p>3 driver; is that right?</p> <p>4 A. Yes.</p> <p>5 Q. Do they have to enter any other information</p> <p>6 regarding the proof of insurance?</p> <p>7 A. No.</p> <p>8 Q. Are drivers required to have insurance in order to</p> <p>9 be delivery drivers?</p> <p>10 A. They have to have insurance to be legal on the road.</p> <p>11 Q. Do they have to -- in order to be a delivery driver</p> <p>12 for Hungry Howie's do they have to have insurance</p> <p>13 for their vehicle?</p> <p>14 A. They have to be able to be legal on the road, so</p> <p>15 yes.</p> <p>16 Q. So what does legal on the read entail?</p> <p>17 A. Michigan law says to drive a vehicle you have to</p> <p>18 have a driver's license, registration and insurance.</p> <p>19 Q. Is there anything else? You said they have to be</p> <p>20 legal on the road, so is there anything else in</p> <p>21 there? Like, for instance, you have to have all</p> <p>22 your -- your brake lights have to work, right?</p> <p>23 That's a part of being legal on the road?</p> <p>24 A. That is a part of being legal on the road.</p> <p>25 Q. Other safety features. Your windshield can't be</p>	<p style="text-align: right;">Page 44</p> <p>1 of the ones we've already discussed on your</p> <p>2 spreadsheet, Exhibit 20?</p> <p>3 A. No.</p> <p>4 Q. So if the drivers were going to be reimbursed for</p> <p>5 all those kinds of expenses of keeping a car legal</p> <p>6 on the road, insurance, registration, upkeep, et</p> <p>7 cetera, it would all have to be within those areas</p> <p>8 of compensation we just discussed on your</p> <p>9 spreadsheet, right?</p> <p>10 MR. THEUER: Objection to the lack of</p> <p>11 foundation and form of the question, but go ahead</p> <p>12 and answer it.</p> <p>13 BY MR. BLANCHARD:</p> <p>14 Q. Are you saying it's somewhere -- if these expenses</p> <p>15 are reimbursed -- let me back up here. You're</p> <p>16 saying expenses are reimbursed and they're</p> <p>17 reimbursed somewhere within the compensation package</p> <p>18 that's just been discussed in your spreadsheet</p> <p>19 Exhibit 20?</p> <p>20 MR. THEUER: Objection. It mischaracterizes</p> <p>21 the testimony and lack of foundation. Answer it if</p> <p>22 you understand it.</p> <p>23 THE WITNESS: I don't know.</p> <p>24 MR. BLANCHARD: It's getting tough here.</p> <p>25 BY MR. BLANCHARD:</p>

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<p style="text-align: right;">Page 49</p> <p>1 MR. THEUER: The same objection as before.</p> <p>2 Answer if you can.</p> <p>3 BY MR. BLANCHARD:</p> <p>4 Q. Or just say we don't reimburse people for those</p> <p>5 kinds of expenses. It's got to be one or the other.</p> <p>6 I'm just trying to figure out what the company's</p> <p>7 portion is at this point when we're like two years</p> <p>8 into litigation about whether they're actually</p> <p>9 reimbursing drivers or not.</p> <p>10 MR. THEUER: Ask a question so she can answer.</p> <p>11 MR. BLANCHARD: There's a couple pending.</p> <p>12 BY MR. BLANCHARD:</p> <p>13 Q. Is it the company's position that they reimburse the</p> <p>14 drivers for all of the expenses related to driving</p> <p>15 their vehicles for the defendant companies or is it</p> <p>16 the company's position that they don't reimburse all</p> <p>17 of those expenses?</p> <p>18 MR. THEUER: Objection as to the form and</p> <p>19 foundation of the question. Answer if you can.</p> <p>20 THE WITNESS: We pay them with their wages,</p> <p>21 tips, commission in a package to get them to the</p> <p>22 minimum wage including expenses.</p> <p>23 BY MR. BLANCHARD:</p> <p>24 Q. Does the amount of -- any amount in the compensation</p> <p>25 package vary with the driver based on what kind of</p>	<p style="text-align: right;">Page 51</p> <p>1 whether people are getting reimbursed or not</p> <p>2 reimbursed and I appreciate you being patient with</p> <p>3 me as well. I'm trying to be patient myself.</p> <p>4 MR. THEUER: Do you want a break?</p> <p>5 THE WITNESS: Yes.</p> <p>6 MR. BLANCHARD: Do you want a break?</p> <p>7 THE WITNESS: Please.</p> <p>8 (Break in proceedings at 3:09 p.m.)</p> <p>9 (Back on the record at 3:21 p.m.)</p> <p>10 MR. BLANCHARD: Back on the record.</p> <p>11 BY MR. BLANCHARD:</p> <p>12 Q. One thing I forgot to follow-up on when we were</p> <p>13 talking about the insurance and stuff is you said</p> <p>14 that the defendant stores always make sure the</p> <p>15 delivery drivers have proof of insurance, right?</p> <p>16 A. Yes.</p> <p>17 Q. Do they ask the delivery drivers whether they have</p> <p>18 commercial insurance or just regular PL/PD</p> <p>19 insurance?</p> <p>20 A. We just ask for proof of insurance.</p> <p>21 Q. You don't ask for the policy or for certain waivers</p> <p>22 or benefits in any insurance package?</p> <p>23 A. No.</p> <p>24 MR. BLANCHARD: Let me mark this as an exhibit.</p> <p>25 (Deposition Exhibit No. 25)</p>
<p style="text-align: right;">Page 50</p> <p>1 car they have or how much it costs them for</p> <p>2 insurance or any other individual factors for the</p> <p>3 drivers?</p> <p>4 A. Does the amount that we --</p> <p>5 Q. Yeah. Any amount of the compensation package vary</p> <p>6 based on the individual expenses of the driver and</p> <p>7 how much they pay for their car payment or</p> <p>8 something?</p> <p>9 A. No.</p> <p>10 Q. Do you ever ask the drivers to submit oil change</p> <p>11 receipts or other maintenance receipts to determine</p> <p>12 how much that they are expending?</p> <p>13 A. No.</p> <p>14 Q. It's whatever amount they're being reimbursed as</p> <p>15 part of this compensation package that you've talked</p> <p>16 about. It's a generally applicable amount to all of</p> <p>17 the drivers, right? It doesn't vary based on the</p> <p>18 individual needs of the driver?</p> <p>19 A. Yes.</p> <p>20 Q. Yes, that's correct?</p> <p>21 A. Yes.</p> <p>22 Q. I mean I'm sorry I'm being tough here. It's just</p> <p>23 that we're really frustrated. We're entitled to</p> <p>24 know exactly what the defendant's position is</p> <p>25 regarding the comp structure and particularly</p>	<p style="text-align: right;">Page 52</p> <p>1 was marked for identification.)</p> <p>2 BY MR. BLANCHARD:</p> <p>3 Q. This is a payroll report. Do I have that right,</p> <p>4 that's what it is?</p> <p>5 A. Yes.</p> <p>6 Q. Now, if we spread them out Exhibit 21 is a payroll</p> <p>7 summary report. 25 is a payroll report. It's a</p> <p>8 different document. 22 is your paycheck record.</p> <p>9 And 20 we've been talking about as well. If we can</p> <p>10 line up some of the documents I just want to talk</p> <p>11 for a minute about how they interact so I'm reading</p> <p>12 it properly. In Exhibit 25 if you turn to page --</p> <p>13 using the numbers on the bottom right corner,</p> <p>14 TWE000669. And I want you to take a look at the</p> <p>15 pages before and the pages after to verify page 668</p> <p>16 shows Chad McFarlin at the top. So pages 668,</p> <p>17 669, 670, 671 all relate to the Chad McFarlin</p> <p>18 payroll report, right?</p> <p>19 A. Yes.</p> <p>20 Q. And one of the troubles I'm having is that these</p> <p>21 different reports have different time periods and so</p> <p>22 they overlap in some way, but they're not apples</p> <p>23 apples as we say. So the payroll report says May</p> <p>24 1st to 9-30, but this gives us a day-by-day report</p> <p>25 of the hours worked and the amount paid; is that</p>

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<p style="text-align: right;">Page 53</p> <p>1 right, in Exhibit 25?</p> <p>2 A. Of what the computer keeps track of, yes.</p> <p>3 Q. And then Exhibit 21, TWE000367, that's another</p> <p>4 payroll summary report?</p> <p>5 A. Yes.</p> <p>6 Q. And that's 3-1 through 5-31-2016. So that would</p> <p>7 overlap some of the same weeks as the payroll report</p> <p>8 that we looked at in Exhibit 25, right?</p> <p>9 A. Yes.</p> <p>10 Q. Is there a reason why the period in this Exhibit 21</p> <p>11 payroll summary report at the point we're looking</p> <p>12 at -- 3-1-2016 to 5-31-2016, is that part of a</p> <p>13 quarter in a fiscal year or is that just how it --</p> <p>14 A. That's just how someone produced them, yes.</p> <p>15 Q. They just chose a start date and end date and that's</p> <p>16 how it came out?</p> <p>17 A. Yes.</p> <p>18 Q. Do you know -- how do I ask this? Exhibit 22, this</p> <p>19 is the employee check record. That's what comes</p> <p>20 from the accountant, right?</p> <p>21 A. Yes.</p> <p>22 Q. And on TWE669 --</p> <p>23 MR. THEUER: You're on Exhibit 25?</p> <p>24 MR. BLANCHARD: I'm on Exhibit 25.</p> <p>25 BY MR. BLANCHARD:</p>	<p style="text-align: right;">Page 55</p> <p>1 tell me which numbers on Exhibit 25 correspond to</p> <p>2 that gross pay number.</p> <p>3 A. I would have to look at a calendar because the check</p> <p>4 date would be the Thursday after the pay period</p> <p>5 ended and then it would go back.</p> <p>6 Q. The pay period ends on?</p> <p>7 A. On Sunday.</p> <p>8 Q. So four days after?</p> <p>9 A. So that would be the 10th. So it would have been</p> <p>10 week nine and week 10 on page 669.</p> <p>11 Q. So the 165.95 and the 213.85 numbers are a part of</p> <p>12 that gross pay?</p> <p>13 A. Yes.</p> <p>14 Q. And then also the credit card tips that were</p> <p>15 reported as 60.22 and 109.74 are also a part of that</p> <p>16 gross pay, right?</p> <p>17 A. Yes.</p> <p>18 Q. And then in Exhibit 25 there's a column for comp</p> <p>19 that we talked a lot about. It's the delivery fee</p> <p>20 money, right?</p> <p>21 A. Yes.</p> <p>22 Q. And remind me. I just read through the transcript</p> <p>23 for the prior depositions last night. That's kind of all</p> <p>24 the delivery fee money except Laingsburg does not</p> <p>25 show up on there?</p>
<p style="text-align: right;">Page 54</p> <p>1 Q. If we could look at that against the first page of</p> <p>2 Exhibit 22. That's what I'm trying to understand</p> <p>3 here. So 22 has a gross pay column for July 14th</p> <p>4 and July 28th of 2016 and that gross pay column is</p> <p>5 recorded and -- this is the accountant's stuff, so</p> <p>6 reported and taxed. It's made up of -- some of the</p> <p>7 numbers we see on Exhibit 25, that's what I'm trying</p> <p>8 to walk you through.</p> <p>9 A. Yes.</p> <p>10 Q. So, for instance, at 7-14-16 we have a total of</p> <p>11 590.46. Do you see that gross pay on Exhibit 22 for</p> <p>12 July 14th? Do you see that?</p> <p>13 A. It's 549.48.</p> <p>14 Q. I'm seeing 590.46 gross pay on July 14th.</p> <p>15 A. I have 549.48. Which employee are you looking at?</p> <p>16 Q. Oh, you're on the second page. You're right. I'm</p> <p>17 looking on the wrong page because that's not Chad</p> <p>18 McFarlin. So we're looking at the second page of</p> <p>19 this. It's TWE0246. You're absolutely right. For</p> <p>20 July 14th we've got 549.48 you're saying --</p> <p>21 A. Yes.</p> <p>22 Q. -- is the number on Exhibit 22 for that payroll</p> <p>23 period, right?</p> <p>24 A. Yes.</p> <p>25 Q. That's the gross pay. And the gross pay -- can you</p>	<p style="text-align: right;">Page 56</p> <p>1 A. Correct.</p> <p>2 Q. And the only way to get an accounting for the</p> <p>3 Laingsburg delivery fee is by looking at the</p> <p>4 actual delivery addresses?</p> <p>5 A. Yes.</p> <p>6 Q. So back to this. Exhibit 25, the comp for week nine</p> <p>7 and week 10, those numbers 31.50 and \$48 are not a</p> <p>8 part of this gross number --</p> <p>9 A. Correct.</p> <p>10 Q. -- that's recorded on Exhibit 22; is that right?</p> <p>11 A. Yes.</p> <p>12 Q. And those delivery fee numbers don't show up</p> <p>13 anywhere on this Exhibit 22; is that right?</p> <p>14 A. Right.</p> <p>15 Q. Well, let's see if it's the same thing. If we take</p> <p>16 Exhibit 20 now and look at your calculations, the</p> <p>17 curious question there that reminded me when I asked</p> <p>18 the other question, the delivery fees for</p> <p>19 Laingsburg, did you take those into account when you</p> <p>20 made this new spreadsheet thing?</p> <p>21 A. Yes.</p> <p>22 Q. And you did that again by looking at the actual</p> <p>23 addresses and trying to figure out well, if it's in</p> <p>24 Laingsburg we assume he got that extra pay for that,</p> <p>25 correct?</p>

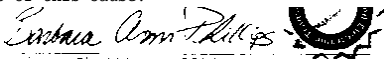
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1 A. Yes.
2 Q. So this is the pay period for July 14th. Driver
3 commission paid, we have \$85 here. It's not on
4 Exhibit 22. We've established that. And on Exhibit
5 25 for those two weeks you have \$48 plus 31.50 is
6 79.50 that shows up on Exhibit 25. And would I be
7 correct in assuming that the difference between
8 79.50 that shows up on there and the \$85 that you
9 have on your spreadsheet you created, Exhibit 20, is
10 because of the Laingsburg deliveries?
11 A. Yes.
12 Q. Cool. So we've talked about all these payment
13 components really on all these exhibits, but I'll
14 focus on Exhibit 20. All these different components
15 of compensation that you testified, is there any
16 particular one of them that the defendant can point
17 to as intended to reasonably compensate delivery
18 drivers for the expenses incurred in driving their
19 cars?
20 A. It is all a package deal.
21 MR. BLANCHARD: Thanks. I don't have anything
22 further. Do you want to follow-up?
23 MR. THEUER: No. I think I have nothing.
24 *****
25 (Deposition concluded at 3:36 p.m.)

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1 STATE OF MICHIGAN)
) ss.
2 COUNTY OF OAKLAND)
3 CERTIFICATE OF NOTARY PUBLIC
 AND COURT REPORTER
4
5 I, BARBARA PHILLIPS, Notary Public in
6 and for the County of Oakland, State of
7 Michigan, do hereby certify that the witness
8 whose attached deposition was taken before me
9 was first duly sworn to testify to the truth,
10 the whole truth and nothing but the truth;
11 that thereupon the foregoing questions were
12 asked and the foregoing answers were made by
13 the witness, which were duly recorded by me
14 electronically; and were reduced to
15 typewritten form by computer-aided
16 transcription under my direction; and that
17 this is, to the best of my knowledge and
18 belief, a true and correct transcript of my
19 electronic records so taken.
20 I further certify that I am neither of
21 counsel to either party, nor interested in the
22 events of this cause.
23 
24 Barbara Phillips, #5598
 Notary Public, Oakland County, MI
25 My Commission Expires: 11-27-2018